A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH

CORAM: **HON'BLE SHRI JAGDISH BHALLA, Ag. C.J. &**
HON'BLE SHRI DILIP RAOSAHEB DESHMUKH, J.

Miscellaneous Appeal (C) No. 818 of 2007

Appellant : Rajesh Kumar Kaushik, aged about 30 years, S/o Laxman Prasad Kaushik, R/o. Village Dhamni, P.S. Hirri, Tahsil Sargaon, District Bilaspur (C.G.)

VERSUS

Respondents

1. Tej Narayan Singh, S/o. Jang Bahadur Singh, R/o Sector-6, Bhilai Nagar, Qtr. No. 6A/83, Bhilai, Tahsil & District Durg (C.G.)

2. Manager, M/s. Niroj Ispat Pvt. Ltd. R/o 14/A Heavy Industrial Area, Bhilai, District Durg (C.G.)

3. The New India Insurance Company, Branch Office, In front of Dena Bank, Nandani Road Bhilai, District Durg (C.G.)

Miscellaneous Appeal under Section 173 of the Motor Vehicle Act, 1988 for enhancement of the compensation amount

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Present : Shri Anand Kumar Tiwari, counsel for the appellant.

ORAL ORDER
(Passed on 20th July, 2007)

The following oral order of the Court was passed by **Hon'ble Dilip Raosaheb Deshmukh, J.**

Heard.

2. The only point urged by learned counsel for the appellant, a motor-cycle mechanic, in this appeal for enhancement of compensation is that in a case where the claimant is alleged to have suffered 30% permanent

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disability due to fracture near the calf muscle in the right leg, the compensation of Rs.1,00,000/- awarded by the learned Tribunal is too low since the Tribunal did not take into consideration the extent of permanent disability suffered by the claimant.

3. It is not in dispute that the claimant did not examine the doctor issuing the permanent disability certificate. Learned counsel for the appellant could not substantiate whether the certificate filed before the M.A.C.T. was of the Medical Board. The claimant had admitted before the M.A.C.T. that he did not possess a driving licence and had sustained the fracture while he was riding a motor-cycle due to collision with an oncoming car. No documentary evidence was led by the claimant to show his income.

4. Time and again, this Court has reiterated that in order to prove permanent disability the claimant is under an obligation to examine the doctor issuing the certificate of permanent disability. In Sudhir Bhuiya Vs. National insurance Company Ltd., & another 2005 ACJ 509, it was observed as under:

> "If the appellant really wants support from the opinion of any doctor or board of doctors, the insurance company and the owner of the vehicle, against whom the said opinion will be used, should be given an opportunity to cross-examine those persons for the purpose of ascertaining the truth of their opinion contained in the certificate; it is preposterous to suggest that by mere producing a certificate showing that a person had become disabled, he can force the Insurance Company or the owner of the vehicle to pay compensation though the genuineness of the document is not proved and

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they are not in a position to cross-examine the person who has allegedly given such opinion."

5. We are in complete agreement with the above observation and would further like to add that a duty is cast on the M.A.C.T. to ensure that process is issued to the doctor concerned issuing certificate of permanent disability and his attendance secured in the Court. Under the Motor Vehicles Act, the M.A.C.T. is under an obligation to award just and reasonable compensation and can not shirk its responsibility by taking shelter of the fact that the claimant had failed to examine the doctor issuing the certificate of permanent disability. In most of the cases in Chhattisgarh, the claimants are illiterate and poor villagers and sometimes illiterate widows, minor children etc. The Presiding Judge of the M.A.C.T. in such cases should take pains to see that process is issued to the doctor concerned, his attendance secured in the Court and the insurer is given opportunity to cross-examine the doctor. The Presiding Judge of the M.A.C.T. being under an obligation to award just and reasonable compensation should not remain a silent spectator during the proceedings.

6. In view of the facts and circumstances mentioned in paragraph 3 (supra), since in our considered opinion the compensation awarded by the M.A.C.T. is commensurate with the injury suffered and the learned counsel for the appellant has also not been able to submit whether the appellant had filed any certificate of the Medical Board in support of the disability suffered by him, we find no reason to interfere with the impugned

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award in this appeal. Accordingly, the appeal is dismissed at the stage of admission itself.

7. A copy of this order be sent to all the Presiding Judges of the Motor Accidents Claims Tribunal in Chhattisgarh for their guidance and strict compliance.

Sd/-

Ag Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge

subhu